

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION
WRIT PETITION NO.5680 OF 2006**

Dr.(Mrs.) Rohan F. Chinoy ...Petitioner.
V/s.
Defence Estate Officer & Ors. ...Respondents.

Shri Pankaj Rajmachikar with Shri Pankaj J. Das for the
Petitioner.

Shri V.G.Mujumdar for Respondent No.2.

Shri Tejesh Dande for Respondent No.3.

**CORAM: B.H.MARLAPALLE &
J.H.BHATIA, JJ.
DATE : 20th December, 2006.**

P.C.:

1. Heard the learned counsel for the respective parties.

2. Rule.

3. Respondents waive the service. Rule is taken up for final hearing forthwith.

4. Pursuant to our order dated 12-12-2006, the respondent-cantonment board through its learned counsel, Mr.Mujumdar has placed before us the original file and we have seen the order updating the extract of Survey No.390/854-1 on 28-6-2006 is passed without hearing of the parties concerned. The said order states that an

application was made by the present respondent no.3 to respondent no.2-cantonment board and legal opinion was obtained by the board which suggested that extract be updated as per the application.

5. The petitioner claims her exclusive rights to the said property on the basis of a will made by late Smt. Dina Dara Sukhia and as per the petitioner, the said will had bequeathed the said property to the petitioner and late Shri Viraf Dara Sukhia. The petitioner also claims that the present respondent no.3 has no legal right, title, interest, share or claim in the subject property, these issues as raised by the petitioner can not be considered by us and the inter-se rights between the parties will have to be decided by the appropriate forum. It would, therefore, be necessary for respondent no.2 to issue notice to all the parties concerned, i.e., the petitioner as well as respondent no.3 afresh and hear them for considering the application submitted by respondent no.3 and fresh orders will have to be passed keeping the material placed by each of them before respondent no.2 for its considerations. If the respondent no.2 is not satisfied on the basis of material placed before it regarding the exclusive rights of all the parties or if it is prima-facie of the view that the parties will have to

approach the appropriate forum for getting respective rights adjudicated upon, respondent no.2 may direct so.

6. We, therefore, allow this petition and quash and set aside the impugned extract of survey updated on 28-6-2006 by respondent no.2-cantonment board. We direct the said board to issue fresh notice to the petitioner and respondent no.3 and hear both of them so as to decide a fresh application submitted by respondent no.3. On remand, the application be decided as per the law as expeditiously as possible and preferably on 31st March, 2007.

7. In the meanwhile, undoubtedly, the parties shall maintain status-quo in respect of the subject property.

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(J.H.BHATIA, J.)

(B.H.MARLAPALLE, J.)